No. 12-1350

IN THE

Supreme Court of the United States

YOEL WEISSHAUS,

Petitioner,

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

KATHLEEN GILL MILLER
Counsel of Record
OFFICE OF JAMES M. BEGLEY
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
225 Park Avenue South
13th Floor
New York, New York 10003
(212) 435-3434
kgmiller@panynj.gov

Attorney for Respondent

247847

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

LIST OF PARTIES

All the named New York and New Jersey state defendants were dismissed by the District Court.

TABLE OF CONTENTS

Table of Contents

Page

TABLE OF CITED AUTHORITIES

Page

CASES

Cited Authorities

Page

Page

Cited Authorities

Page

Cited Authorities

Page

Page

STATUTES AND OTHER AUTHORITIES

STATEMENT OF THE CASE

The Port Authority of New York and New Jersey (the "Port Authority") is a bi-state agency, which is authorized by both the State of New York and the State of New Jersey to collect tolls at its bridge and tunnel facilities. See *McKinney's N.Y. Unconsol. Law* § 6501 et seq.; *N.J. S.A.* 32:1-118 *et seq.* In a press release on August 5, 2011, the Port Authority proposed a toll increase on its tunnels and bridges and a fare increase on the Port Authority Trans-Hudson Corporation ("PATH") commuter rail system. In a meeting on August 19, 2011, the Port Authority Board of Commissioners held a meeting to approve a modified toll increase schedule. There were reasons given at that meeting for the toll increase, including increased costs of security, and a need to overhaul the Bayonne, Goethals and George Washington Bridges.[1] The toll increase went into effect on September 18, 2011.

Petitioner, Yoel Weisshaus ("Weisshaus"), filed the complaint *pro se* and an application to proceed in *forma*

1. These striking facts are set forth in *Automobile Club of New York, Inc. v. Port Authority of New York and New Jersey*, 842 F.Supp.2d 672 (S.D.N.Y. 2012). In that case, AAA challenged the same toll increase as Weisshaus under the Surface Transportation and Uniform Relocation Assistance Act of 1987 (the "Highway Act"), 33 U.S.C. § 508 (1987) and the dormant Commerce Clause 33 U.S.C. § 597. The District Court denied AAA's request for preliminary injunction on the ground it failed to show substantial likelihood of success on the merits under the Highway Act or the dormant Commerce Clause. The District Court converted the Port Authority's motion to dismiss to a motion for summary judgment to be heard on the conclusion of limited discovery. The case is still pending.

pauperis on September 19, 2011 in the Southern District of New York challenging the toll increases. The Port Authority was never served with a summons or the complaint. On October 24, 2011, the District Court *sua sponte* dismissed the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim with respect to Weishaus's constitutional and *Robinson-Patman Act* claims as against the Port Authority and on the ground of immunity against the state defendants. Weisshaus filed a motion for reconsideration which was denied by the Chief Judge of the Southern District on December 8, 2011. On November 18, 2011, Weisshaus filed a Notice of Appeal. An Amended Notice of Appeal was filed on December 22, 2011. The Port Authority filed a Notice of Appearance on September 21, 2012. Despite not having been served with process, the Port Authority filed a brief and argued in defense of the dismissal by the District Court. On September 20, 2012, the Second Circuit affirmed the dismissal by the District Court except as to a possible dormant Commerce Clause claim for which the dismissal was reversed and remanded to the District Court. Weissman 's Petition for Rehearing e*n banc* was denied by the Second Circuit on January 8, 2013. The Petition for *Certiorari* dated May 8, 2013 only seeks review of the dismissal of the federal claim based on the alleged infringement of the right to travel.

SUMMARY OF ARGUMENT

The Court of Appeals for the Second Circuit ("Second Circuit") correctly affirmed the district court's *sua sponte* order of dismissal pursuant to 28 U.S.C. § 1915 (e)(2)(B)(ii) of Weisshaus's claim that the toll increases violated his

constitutional right to travel.[2] It is well recognized that a transportation facility provided at public expense aids rather than hinders the right to travel. This Court has ruled: "the [airport] facility provided at public expense aides rather than hinders the right to travel. A permissible charge to help defray the cost of the facility is therefore not a burden in the constitutional sense". *Evansville-Vanderburgh Airport Authority Dist. v Delta Airlines Inc.* 405 U.S. 707, 714, 92 S. Ct. 1349, 1354, 31 L.Ed. 2d 620 (1972).

Weishaus's complaint, alleging that the amount of the toll increase is excessive and violates his right to travel, fails to state a claim that has even an arguable basis in law since the increase affects only the tunnels and bridges operated by the Port Authority. Weisshaus has alternative means of travel between New York and New Jersey, including travel by means of the PATH system. There is no constitutional right to the most convenient form of transportation. *See Torraco v. Port Authority*, 615 F.3d 129, 140-141 (2d Cir. 2010). Weisshaus cannot show that the amount of a toll impedes the freedom to enter or reside in either the State of New York or the

2. In *Weisshaus v. The Port Authority*, 497 Fed. Appx. 102 (2d Cir. 2012), the Second Circuit also affirmed the dismissal of Weisshaus's claims under the Robinson-Patman Act, 15 U.S.C. § 13, for failure to plead an anti-trust injury and the dismissal of his state claims for failure to meet the jurisdictional requirement that he file a Notice of Claim sixty days prior to commencing a lawsuit; See N.Y. Uncons. Laws § 7107 (McKinney's); N.J. Stat. Ann.§ 32:1-163. The Second Circuit reversed and remanded with respect to whether Weisshaus had adequately pleaded a constitutional challenge to the amount of the toll increase under the dormant Commerce Clause.

State of New Jersey, *See Attorney General of New York v. Eduardo Soto-Lopez, et al.* 476 U.S. 898, 106 s. Ct. 2317, 90 L.Ed.2d 899 (1986). Nor can he show that the toll affects residents and non-residents differently. Accordingly, even assuming the truth and sufficiency of all of the facts pled in the complaint, it fails to state a claim for violation of the constitutional right to travel and was properly dismissed.

The Second Circuit's decision in *Weisshaus v. The Port Authority*, 497 Fed. Appx. 102 (2d Cir. 2012) is not in conflict with any other Circuit and is consistent with the rulings of this Court with respect to the constitutional right to travel.

ARGUMENT

POINT I

THE SECOND CIRCUIT'S AFFIRMATION OF THE DISTRICT COURT'S *SUA SPONTE* DISMISSAL OF WEISSHAUS'S CLAIM THAT HIS CONSTITUTIONAL RIGHT TO TRAVEL WAS INFRINGED BY THE TOLL INCREASE IS CONSISENT WITH THE RULINGS OF THIS COURT

A. The Standard for Dismissal Under 28 U.S.C. § 1915 (e)(2)(B)(ii) Was Correctly Applied By The Second Circuit

As this Court acknowledged in *Neitzke v. Williams*, 490 U.S. 319, 328, 109 S. Ct. 1826, 1833, 104 L.Ed.2d 338 (1989) "[t]o the extent that a complaint filed in *forma pauperis* which fails to state a claim lacks even an arguable basis in law, Rule 12(b)(6) and § 1915 (d) both

counsel dismissal." This Court has not interpreted 28 U.S.C. 1915 (e)(2)(B)(ii). However, in *Jones v. Bock*, 549 U.S. 199, 214, 127 S. Ct. 910, 920, 166 L.Ed.2d 798 (2007) it was acknowledged that subsequent to *Neitzke, supra*, which had held that a complaint could not be dismissed under the frivolous standard in § 1915 (d) for failure to state a claim, that "Congress added failure to state a claim … as grounds for *sua sponte* dismissal of in *forma pauperis* cases, § 1915(e)(2)(B) (2000 ed.) … Under 28 U.S.C. § 1915(e)(2)(B)(ii),[3] a District Court is required to dismiss a case at any time if the court determinates that

---

* * *

(B) The action or appeal –

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

The meaning of failure to state a claim was addressed by this Court in *Bell Atlantic v. Twombly*, 550 U.S. 544, 127 S. Ct.1955, 167 L.Ed.2d 929 (2007). In *Twombly*, this Court stated:

---

3. This statute was amended in 1996, Pub.L. 104-134, § 101 [(a)] [§ 804(a)(2)], redesignated former section (d) as (e).

> "[S]omething beyond a mere possibility of loss causation must be alleged, lest a plaintiff with 'a largely groundless claim' be allowed to 'take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value.' [4] So, when the allegations in a complaint however true, could not raise a claim of entitlement of relief, ' this basic deficiency should … be exposed at the point of minimum expenditure of time and money by the parties and the court. ' "[5] 550 U.S. at 558; 127 S. Ct. at 1966.

Although the court is required on a Fed. R. Civ. P. 12(b)(6) motion to accept facts as true, it is not "bound to accept as true a legal conclusion couched as a factual allegation". *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1950, 173 L.Ed.2d 868 (2009). While the *pro se* complaint must be liberally construed and plaintiff is generally given leave to replead before dismissal, leave to amend is not necessary where it would be futile, *See Hughes v. Rowe*, 499 U.S. 5, 9-10, 101 S. Ct. 173, 176, 66 L.Ed.2d 16 (1980) (held that petitioner's claim of bias and irregularity in a prison disciplinary hearing, and unequal treatment and cruel and unusual punishment, even when liberally construed were insufficient to require further proceedings); *Correctional*

---

4. Quoting *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 347, 125 S. Ct. 1627, 161 L.Ed.2d 577 (2005) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 741, 95 S. Ct 1917, 44 L.Ed.2d 537 (1975).

5. Quoting S. Wright & Miller § 1216 at 233-234 (quoting *Daves v. Hawaiian Dredging Co.*, 114 F.Supp. 643, 645 (D. Hawai 1953),

Services Corp. v. Malesko, 534 U.S. 61, 122 S. Ct. 515, 151 L.Ed.2d 456 (2001) (held that petitioner's claim was properly dismissed by the District Court since claims under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L.Ed.2d 619 (1971) could not be made against private entities that engaged in alleged constitutional deprivations while acting under color of federal law.

At the outset, the Second Circuit in its decision in *Weisshaus* acknowledges that "[w]hile *pro se* complaints must contain sufficient allegations to meet the plausibility standard, we read *pro se* complaints with 'special solicitude and interpret them to raise the strongest arguments that they suggest' quoting *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006). *Id*. at 104.

Weisshaus erroneously contends that the Second Circuit's *de novo* review of the District Court is in conflict with this Court's ruling in *Denton v. Hernandez*, 504 U.S. 25, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992) and that he is harmed thereby. In *Denton*, this Court was reviewing a dismissal under 1915(d) before this section was amended adding dismissal for failure to state a claim and renumbered as § 1915 (e). The holding in *Denton* was limited to a *sua sponte* dismissal on the ground of frivolousness, which this Court held was a discretionary determination and that the proper standard for review is abuse of discretion. This Court in *Denton* expressly stated that it was not opining on when a *pro se* litigant bringing a suit in *forma pauperis* is entitled to amend the complaint under § 1915. Weisshaus also mistakenly argues that his claim should survive the plausibility test under *Ashcroft v. Iqbal*, 556 U.S. 662, 683, 129 S.Ct. 1937, 1954,

173 L.Ed.2d 868 (2009) or that he should be permitted to amend his pleading. Weisshaus ignores the fact that the Second Circuit dismissed his claim because his legal theory was unsound. It would be futile for Weissshaus to replead since no additional facts would render his claim that the toll increase, whatever the amount, violated his constitutional right to travel.

B. Weisshaus's Right to Travel Is Not Infringed By The Toll Increase Since This Court Has Declined To Hold That There Is A Fundamental Right To Drive And Has Held That Tolls Related To Usage Of A Public Travel Facility Do Not Violate The Constitutional Right to Travel

It is undisputed that this Court has recognized a fundamental right to travel. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 899, 903, 106 S. Ct. 2317, 2321, 90 L.Ed.2d 899 (1986) (held that the New York Civil Service Law provision, which granted a preference in the form of points added to test scores to honorably discharged residents who served in the armed forces during a time of war and who were New York residents when they entered the service, unlawfully impinged on the right to travel under the U.S. Const.) *citing Shapiro v. Thompson*, 394 U.S. 618, 634, 89 S. Ct. 1322, 1328, 22 L.Ed.2d 600 (1969) (held that statute denying welfare assistance to persons who have less than one year of residency violated constitutional right to travel and the Equal Protection Clause). The right to travel embraces three different components: the right to enter and leave another state; the right to be treated as a welcome visitor while temporarily present in another state; and for those

travelers who elect to become permanent residents, the right to be treated like other citizens of that state. *Saenz v. Roe*, 526 U.S. 489, 500, 119 S. Ct. 1518, 1525, 143 L.Ed.2d 689 (1999). The right to travel is implicated as the Second Circuit correctly stated in *Weisshaus*: 1) when a law or action deters such travel; 2) when impeding travel is its primary objective; and 3) when a law uses a classification which serves to penalize the exercise of the right. *Id*. at 104. *See also Attorney General of New York v. Soto-Lopez*, *supra*, 476 U.S. at 908, S. Ct. at 2321; *Zobel v. Williams*, 457 U.S. 55 at 62 N.9, 102 S. Ct. 2309 at 2314 No. 9, 72 L.Ed.2d 677 (1982) (held that Alaska's dividend distribution program favoring new residents over older ones violated the Equal Protection Clause of the Fourteenth Amendment.)

While certain types of right-to-travel claims have been held to require strict scrutiny, that standard of review has only been applied by this Court when a law created different classes of residents thereby implicating equal protection which is not at issue here. See *Attorney General of New York v. Soto-Lopez, supra*, 476 U.S. 898, 904, 106 S. Ct. 2317, 2321. In *Attorney General of New York v. Soto-Lopez*, this Court characterizes the right requiring heightened scrutiny as the "right of interstate migration" 476 U.S. at 905, 106 S. Ct. at 2322. More recently, in *Saenz v. Roe*, 526 U.S. 489, 119 S. ct. 1518, 143 L.Ed.2d 689 (1999) this Court affirmed the Ninth Circuit's decision, which struck down a California Statute imposing a durational residency requirement by limiting welfare benefits through a recipient's first year of residency, based on the Privileges and Immunities Clause, U.S. Const. Art. IV § 12. This Court affirmed in *Saenz* that the standard of review was not rational basis, but strictest scrutiny

because the right to travel "embraces the citizen's right to be treated equally in her new state of residence." 526 U.S. at 504-505, 119 S. Ct. at 1527.

Weisshaus's right–to-travel claim does not involve the Equal Protection Clause because he does not contend that he is treated differently from others by virtue of his residency. He pays the same toll that any other driver pays. His complaint that drivers who pay cash are penalized because E-Z Pass drivers get a discount, does not amount to an Equal Protection Claim on its face. Nor does Weisshaus's claim implicate the Privileges and Immunities Clause since it is nowhere claimed in his lawsuit that the tolls fall unequally upon him as a New Jersey resident as compared to New York residents. The toll impacts those traveling by means of the Port Authority tunnels and bridges regardless of their residence in any state.

Weisshaus's contention that his right to travel is unconstitutionally burdened because he has to pay an excessively high toll to drive his vehicle on or in Port Authority facilities has no support in this Court's jurisprudence on the right of interstate travel. In *Dixon v. Love*, 431 U.S. 105, 97 S. Ct. 1723, 52 L.Ed.2d 172 (1977). This Court held that the summary revocation under Illinois law of the license of a motorist who has repeatedly been convicted of traffic offenses did not violate the motorist's due process rights even though the full administrative hearing did not take place until after the revocation occurred. Thereafter in *Mackey v. Montrym*, 443 U.S. 1, 99 S. Ct. 2612, 61 L.Ed. 2d 321 (1979), this Court held that a Massachusetts Statute, that mandated the suspension of a driver's license for refusing to take

a breathalyzer test upon arrest for operating a motor vehicle while intoxicated, did not violate due process. This Court did not afford the possession of a driver's license the weight of a fundamental right, although it had the opportunity to do so in both *Dixon* and *Mackey*. Weisshaus has available other means of traveling between New York and New Jersey so the toll only affects him if he chooses to drive. " 'Merely having an effect on travel is not sufficient to raise an issue of Constitutional dimension.' ". *Weisshaus*, supra, at 104 quoting *Soto-Lopez v. New York Civil Service Comm'n,* 756 F.2d 266, 278 (2d Cir. 985).

Moreover, this Court has consistently "sustained numerous tolls based on a variety of measures of actual use, including horsepower, *Hendrick v. Maryland*, supra; [6] *Kane v. New Jersey*, 242 U.S. 160, 37 S. Ct. 30, 61 L.Ed. 222 (1916); number and capacity of vehicles, *Clark v. Poor*, 274 U.S. 554, 47 S. Ct. 702, 71 L.Ed. 1199 (1927); mileage within the state, *Interstate Buses Corp. v. Blodgett*, 276 U.S. 245, 48 S. Ct. 230, 72 L.Ed. 551 (1928); gross-ton mileage, *Continental Baking Co. v. Woodring*, 286 U.S. 352, 52 S. Ct. 595, 76 L.Ed. 1155 (1932); carrying capacity, *Hicklin v. Coney*, 290 U.S. 169, 54 S. Ct. 142, 78 L.Ed. 247 (1933); and manufacturer's rated capacity and weight of trailers, *Dixie Ohio Express Co. v. State Revenue Comm.*, 306 U.S. 72, 59 S. Ct. 435, 83 L.Ed. 495 (1939)", *Evansville-Vanderburgh Airport Authority Dist. v. Delta Airlines, Inc.*, *supra*, 405 U.S. at 715, 92 S. Ct. at 1354-1355. The flat user fee for public highways was tacitly reaffirmed in *American Trucking Associations, Inc. v. Schneer*, 483 U.S. 266, 107 S. Ct. 2829, 97 L.Ed.2d 226 (1987), where this Court struck down a Pennsylvania statute which imposed

6. 235 U.S. 610, 35 S. Ct. 140, 59 L.Ed. 385 (1915).

a fee that largely fell on out-of-state vehicles. In *American Trucking,* this Court noted "[t]he distinction between a tax on the privilege of using a State's highways and a tax on the privilege of interstate commerce" was dispositive of the cases in which the user fee was upheld. 483 U.S. at 294, 107 S. Ct. at 2846. Here, the toll is a user tax that helps to maintain the transportation facility.

The Second Circuit ruled consistent with this Court's holdings that '[t]ravelers do not have a constitutional right to the most convenient form of travel, and minor restrictions on travel simply do not amount to the denial of a fundamental right' *Weisshaus* 497 Fed. Appx. At 104 *citing Torraco v. The Port Authority of New York and New Jersey*, 615 F.3d 129, 140 (2d Cir. 2010).

POINT II

THE SECOND CIRCUIT'S HOLDING THAT THE RIGHT TO TRAVEL IS NOT VIOLATED BY THE TOLL INCREASE IS NOT IN CONFLICT WITH OTHER CIRCUITS

A. There Is No Conflict Between The Second Circuit And Other Circuits On A Dismissal Pursuant To 28 U.S.C. § 1915 (e)(2)(B)(ii)

The Second Circuit, while acknowledging that the language of Section 1915(e)(2)(B)(ii) mandates dismissal where the complaint fails to state a claim, has held that leave to amend should be granted unless there is no possibility that the amendment would succeed, G*omez v. USAA Federal Savings Bank*, 171 F.3d 794 (2d Cir. 1999) (held that notwithstanding mandatory dismissal language

of § 1915 (e)(2)(B)(ii), *pro se* litigant claiming bank violated his civil rights by investigating him for a crime he didn't commit should be entitled to replead to cure the deficiency that he failed to allege facts showing the bank acted under color of law). The Ninth Circuit in *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) also ruled that while dismissal is required under § 1915(e)(2)(B)(ii) the determination as to whether the dismissal is with or without leave to amend is discretionary. The Ninth Circuit also held in *Lopez*, *supra* that leave to amend should be granted unless it would be unavailing. *Id*. at 1130. The Tenth Circuit in *Perkins v. Kansas Department of Corrections*, 165 F.3d 803 (10th Cir. 1999) noted that 1915 (e)(2)(B((ii) "parallels that of the Federal Rule of Civil Procedure 12 (b)(6)" and that dismissal without leave to amend would only be proper where "it would be futile to give him an opportunity to amend", *Id*. at 806. The Eleventh Circuit in *Troville v. Venz*, 303 F.3d 1256 (11th Cir. 2002) also ruled that a dismissal under § 1915 (e)(2)(B)(ii) should be with leave to replead, but only if allowed under Fed. R. Civ. P. 15. *Id*. at 1260 N.5. The Fifth Circuit in *Goldsmith v. Hood County Jail*, 299 Fed. Appx. 422 (5th Cir. 2008) ruled that while plaintiff should generally have an opportunity to amend before a *sua sponte* dismissal under 1915 (e)(2)(B)(ii), it was not required if plaintiff had set forth his 'best case' and had failed to state a claim. *Id*. In *Davis v. District of Columbia*, 158 F.3d 1342 (D.C. Circuit 1998), the D.C. Circuit affirmed the *sua sponte* dismissal without leave to replead under 28 U.S.C.A. 1915 A (1) of the Prison Litigation Reform Act because 'plaintiff's recovery here even with the facts he proposes to add would be futile . . ." *Id*. at 1349. Weisshaus correctly points out that the Sixth Circuit has ruled that the district court does not have discretion to permit a plaintiff to replead where there is a

sua sponte dismissal for the failure to state a claim under 1915 (e)(2)(B)(ii). See *Agramonte v. Shartle*, 491 Fed. Appx. 557, 560 (6th Cir. 2012); *McGore v. Wrigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997). This difference of opinion by the Sixth Circuit with the other Circuit Courts does not aid Weisshaus in his argument, since he is contending that he should have been granted leave to replead his claim that his constitutional right to travel was infringed by the toll increase.

Here, the Second Circuit having ruled that there was no constitutional right to travel by the most convenient method – namely by car, tacitly found that leave to replead would be futile.

B. There Is No Conflict In The Circuits With Respect To The View That A Toll Increase Does Not Implicate The Constitutional Right To Travel

The Second Circuit's ruling in *Weisshaus* that "[t]ravelers do not have a constitutional right to the most convenient form of travel and that minor restrictions on travel simply do not amount to the denial of a fundamental right" is in accord with holdings in other circuits. *Id.* at 104.

The Ninth Circuit has held that burdens on a single mode of transportation do not implicate the right to interstate travel. See *Monarch Travel Services, Inc. v. Associated Cultural Clubs, Inc.* 446 F.2d 552, 554 (9th Cir. 1972). In *Miller v. Reed*, 176 F.2d 1202 (9th Cir. 1999), relied upon by Weisshaus. The Ninth Circuit rejected a claim that the California Law requirement

that a motorist supply a Social Security Number to the DMV violated his right to travel holding that there is no "fundamental 'right to drive' ". *Id.* at 1206 citing *Dixon v. Love*, supra. The Seventh Circuit cited *Miller v. Reed*, supra, in *Wos v. Sheehan*, 57 Fed. Appx. 694 (7th Cir. 2002) where it rejected plaintiff's claim that his right to travel was violated by his arrest noting that there was no constitutional right to drive without a license. *See also Matthew v. Honish*, 233 Fed. Appx. 563 (7th Cir. 2007) (held state's licensing requirement did not violate plaintiff's right to travel since he was only denied a single mode of transportation). In *Avery v. Hoage*, 7 Fed. Appx. 320 (6th Cir. 2001), the Sixth Circuit summarily denied a similar claim that the plaintiff's constitutional rights were violated by his arrest because he was driving with a suspended license.

Weisshaus has failed to cite a single case in support of the proposition that there is a fundamental constitutional right to drive that is implicated by the toll increase.

Weisshaus's contention that the Second Circuit's ruling on the right to travel in his case is in conflict with the Fifth Circuit in *Cramer v. Skinner*, 931 F.2d 1020 (Fifth Cir. 1991) is without any legal or factual foundation. In *Cramer*, the issue before the court was whether the Love Field amendment restricting air travel from Love Field to contiguous states violated the plaintiff's right to travel. The Fifth Circuit ruled that the amendment, whose purpose was to promote the newer Dallas-Fort Worth Airport, did not violate the right to travel. In its decision in *Cramer*, the Fifth Circuit sounding exactly like the Second Circuit stated that "travelers do not have a constitutional right to the most convenient form of

travel . . . Minor restrictions on travel do not amount to a denial of a fundamental right that can only be upheld if the government has a compelling justification" Id. at 1031.

Since the other Circuit Courts that have ruled on this issue have held that the right to drive is not a fundamental right since there are other means of travel, there is no necessity for this Court to grant *certiorari* to reconcile conflicting rulings.

CONCLUSION

This Court Should Deny This Petition For A Writ of Certiorari To Review The Judgment Of The United States Court Of Appeals For The Second Circuit.

Respectfully submitted,

Kathleen Gill Miller
Counsel of Record
Office of James M. Begley
The Port Authority of New York and New Jersey
225 Park Avenue South
13th Floor
New York, New York 10003
(212) 435-3434
kgmiller@panynj.gov

Attorney for Respondent